IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5948 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SURESHBHAI L SHEKHVA

Versus

S S GANDHI

Appearance:

MR PF MAKWANA for Petitioner

MR MANISH R BHATT for Respondent No. 1

MR RAJNI H MEHTA for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 22/01/97

ORAL JUDGEMENT

By means of the present appeal under Section 30 of the Workmen Compensation Act (hereinafter referred to as 'Act'), the appellant has challenged the judgment and order dated November 21, 1990, passed by the Commissioner for Workmen's Compensation, Ahmedabad, in Workmen Compensation Application No. 149 of 1984, whereby the learned Commissioner awarded Rs.2352/- as compensation to the appellant for the injuries sustained by him on September 11, 1983 during the course of his employment with respondent No.1. The learned Commissioner has also awarded penalty and interest to the appellant.

The appellant was working as casual labourer with the opponent No.1- S.S. Gandhi, Engineers & Contractors, Ahmedabad. On November 11, 1983, when the appellant was employed as workman by respondent No.1, he fell down from the third floor of construction work which was going on in Sutaria Building Compound. It is stated that in the claim application that the appellant was earning at the relevant time Rs.14/- per day as wages. Due to the fall, he sustained fractures of nose and left hand wrist. It is also stated that his six teeth were also fallen and he was admitted in the Vadilal Sarabhai Hospital for treatment. It is further stated that he has sustained permanent disablement of 7.1/2 per cent. The appellant served a notice to respondent No.1 on September 4, 1984 to pay him compensation of Rs.2352.00. In the application before the Commissioner, the appellant claimed compensation under the Act at Rs.2352/- and medical expenses.

The application was contested by respondent No.1 by filing his written statement at Exh.4. It is averred that the application is not maintainable as the insurer-Oriental Fire & General Insurance Company Limited is not joined as party in the said application. That the appellant is not entitled to any compensation, as assessment report of Dr.Gosai of the Vadilal Sarabhai Hospital is 'NIL'. It appears that, subsequently, the respondent No.2-insurance company was impleaded in the claim application and the insurance company filed its written statement at Exh.17 contending, inter alia, that the insurance company was not liable to pay penalty and interest and the application be dismissed.

The learned Commissioner framed issues at Exh.11.

The appellant examined himself at Exh.15. The appellant examined Dr. Viky Parikh atExh.20 to prove the disability suffered by him. In support of his case, the appellant produced documentary evidence which consisted of a certificate from the Vadilal Sarabhai Hospital and a certificate issued by Dr.Viky Parikh. The respondents in support of their case produced insurance policy and panchnama of scene of incident.

After appreciating the oral and documentary evidence, the learned Commissioner awarded Rs.2352/- as compensation together with simple interest at the rate of 6% per annum from September 11, 1983 till the date the amount is actually paid or deposited in the court. The respondent No.1 was directed to pay Rs.1000/- by way of

penalty and Rs.200/- as costs to the appellant. It is not in dispute that, pursuant to the order of the learned Commissioner, the respondents have deposited the entire amount of compensation along with costs and interest before the Commissioner.

It is surprising that, even though the compensation as claimed by the appellant was granted in full, the appellant, on the advice of the learned counsel, has filed this appeal under Section 30 of the Act.

The learned counsel for the appellant, Mr. Makwana, has vehemently argued that as per the provisions contained in Section 4 and Schedule to the Act, the appellant is entitled to Rs.25,000/-. It is further argued by him that, even though the appellant had claimed lesser amount, but, if in the opinion of the Commissioner, the appellant is entitled to higher amount under the Act, then he should be awarded just compensation.

The learned advocate for the appellant invited my attention to the judgment of the Patna High Court in the case of Chhatiya Devi vs. Rup Lal, reported in 1978 LAB.I.C. 1368. The facts in the aforesaid case were that the workman had sustained injuries while he was working as Khalasi in a public carrier bearing No.BRB 1109; injuries were serious in nature which ultimately caused death of workman; the claimants claimed Rs.3500/before the Commissioner, which amount was awarded as compensation to the heirs of the deceased workman. The heirs of the deceased workman challenged the said award before the Patna High Court by filing an appeal and claimed more compensation because of death of the deceased. The Patna High Court, while allowing the appeal, held that where the claimants were entitled to more compensation in view of Schedule IV read with Section 4(1)(a) than claimed by them, then there was no option to the Commissioner, but to allow compensation fixed by the Statute once he holds that the heirs of employee were entitled to claim the same. Even if the heirs of the deceased workman claim less compensation than prescribed under Schedule IV read with Section 4(1)(a), the Commissioner should grant them compensation as provided by the Statute. The provision of Order 2, Rule 2, Civil Procedure Code which provides that a person who relinguished any portion of his claim shall not afterwards sue in respect of the portion so omitted or relinguished, would not apply in view of S.23 of the Act and also Rule 41 of the Workmen's Compensation Rules,

1924.

The principle laid down by the Patna High Court would be applicable to the facts of the present case, provided the appellant herein is entitled to more amount of compensation, as provided under Section 4 or Schedule IV of the Act. In the instant case, the appellant had claimed Rs.2352/- as compensation for the injuries sustained by him because of a fall during the course of his employment. The appellant's case therefore would fall under Schedule IV of the Act. It is an admitted fact that the appellant was getting Rs.14/- per day as casual employer. Monthly income of the appellant was around between Rs.300 and Rs.400. As per Schedule IV, as applicable on the date of incident, taking into consideration the monthly income of the appellant at Rs.400/-, the total figure of permanent total disablement would come to Rs.26,880/- and, if the amount of Rs.26,880/- is divided by the percentage of disability as deposited by Dr. Parikh, then the amount of compensation as per Schedule IV would come to Rs.2100/-. The applicant had claimed Rs.2352/- in his application before the Commissioner, which was allowed in full. The learned advocate for the appellant has not been able to point out that the case of the appellant would fall in other Schedule by which he could claim more amount than the amount he had claimed and awarded by the Commissioner.

The learned advocate for the appellant has further invited my attention to the decision of the Madhya Pradesh High Court in the case of Jagdish vs. Arun Perfumery Works, reported in 1991 ACJ 82. The facts in the said case are that the claimant was a driver who sustained injuries during the course of his employment and because of injuries, he suppressed disablement at 15 per cent in his claim application but it was contended that he has suffered disablement of 100 per cent as he is totally unfit to earn his livelihood as a driver. The Madhya Pradesh High Court held that the workman suffered 50 per cent disablement and his earning has been reduced on account of permanent disablement from Rs.550/- as a driver to Rs.250/- as a chowkidar. The learned advocate for the appellant, relying upon this judgment, has argued that the appellant should be awarded more amount of compensation. I fail to understand how this judgment can help the case of the appellant. The appellant herein even after the incident had continued his employment as casual worker. There is no evidence on the record to point out that the appellant, because of injuries sustained by him and because of disablement suffered by him, could not carry out his work as casual labourer as a

result of which he has incurred economic loss. Dr. Parikh, who had assessed disability of the appellant at 7.5%, did not depose that the disability suffered by the appellant would affect his avocation. On the contrary. Dr. Parikh deposed that he had assessed disability of the appellant taking into consideration disfigurement on his face. It is an admitted fact that the appellant is a causal worker. Disfigurement on face would not affect his daily activities as causal labour and, ultimately, it will not affect his work as casual labourer. Judgment relied upon by the learned advocate for the appellant for the reasons aforestated is not applicable in the present case.

The appellant had claimed Rs.2352 as compensation before the Commissioner, which was fully allowed along with costs, interest and penalty under the Act. In awarding compensation under the Act, the concerned workman is to be compensated as per the Schedule and under the provisions of the Act. In my opinion, the compensation awarded by the Commissioner under the Act is just, proper and legal and it does not call for any interference by this court in the present appeal.

As a result of foregoing discussion, there is no substance in the appeal and the same is liable to be dismissed.

The appeal is, therefore, dismissed with no order as to costs.

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